

FULL BENCH

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Bavdekar and
Mr. Justice Dixit.

1956
Feb. 17

RANCHHODLAL VALLABHDAS (ORIGINAL DEFENDANT) PETITIONER
v. MAHENDRAKUMAR AMBALAL (ORIGINAL PLAINTIFF), OPPONENT.*

Bombay Rents, Hotel and Lodging House Rates Control Act (Bom. LVII of 1947), s. 28 (2) (a)—Bombay Civil Courts Act (Bom. XIV of 1869), ss. 23, 24—Code of Civil Procedure (Act V of 1908), s. 24—Suit pending in Court of Small Causes transferred by District Court to file of Civil Judge (S. D.) under s. 28 (2) (a)—Whether Civil Judge (S. D.) can assign it to the file of Civil Judge (S. D.) or Civil Judge (J. D.)—Whether power of District Court under s. 24 Civil Procedure Code to transfer suits affected by s. 28 of the Bombay Rent Act.

When a suit pending in a Court of Small Causes is withdrawn by the District Court under s. 28 (2) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and transferred to the Court of the Civil Judge (Senior Division), it is not necessary that the Civil Judge (Senior Division) should himself deal with it; he may assign it for trial and disposal to the file of a Civil Judge (Senior Division) or Civil Judge (Junior Division) appointed to his Court to assist him under s. 23 of the Bombay Civil Courts Act, 1869.

Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, does not affect the power of the District Judge under s. 24 of the Code of Civil Procedure, 1908, to transfer a suit pending in a Court of Small Causes to a Joint Civil Judge (Senior Division) or to a Civil Judge (Junior Division).

Special jurisdiction conferred upon an ordinary Court of the land has to be exercised by such Court according to the procedure of that Court unless legislation conferring special jurisdiction provides to the contrary.

Naranbhai Shakrabhai Patel v. Nandlal Balaram,⁽¹⁾ disapproved.

CIVIL Revision Application against the decision of H. J. Bhatt, Esquire, Joint Civil Judge, Senior Division, at Ahmedabad.

One Mahendrakumar (plaintiff) filed a suit for ejectment and arrears of rent in the Court of Small Causes at Ahmedabad against Ranchhodlal (Defendant). The District Judge at Ahmedabad, purporting to exercise his powers under s. 28 (2)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, transferred the suit to the Court of the Civil Judge (Senior Division) at Ahmedabad, who sent the case for trial to the Joint Civil Judge (Senior Division), Ahmedabad. The defendant raised the preliminary objection of want of jurisdiction. The trial Judge rejected the contention and held that he had jurisdiction to try the suit. The defendant preferred a revision application to the High Court. The application came on for hearing before Bavdekar J., who referred it to a Division Bench.

* Civil Revision Application No. 383 of 1955.

1. (1954) Civil Reference No. 22 of 1954, decided by Chainani and Gokhale JJ., on December 16, 1955. (unrep.).

The Division Bench composed of Gajendragadkar and Gokhale JJ. referred the following question to a Full Bench:

"When a suit pending in a Court of Small Causes is withdrawn by the District Court and transferred for trial or disposal to the Court of the Civil Judge (Senior Division), can the Civil Judge (Senior Division) assign it to the file of (a) a Civil Judge (Senior Division) or (b) a Civil Judge (Junior Division), appointed to his Court to assist him under s. 23 of the Bombay Civil Courts Act, or is it necessary that the Civil Judge (Senior Division) himself should deal with it?"

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The following was the referring judgment delivered by Gajendragadkar J. on February 14, 1956:—

Gajendragadkar J.—This revisional application raises a question of jurisdiction under s. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947). The petitioner had been sued by the opponent for ejection and arrears of rent in the Court of Small Causes at Ahmedabad (Civil Suit No. 3179 of 1953). The learned District Judge at Ahmedabad, purporting to exercise his powers under s. 28 (2)(a) of the Act, transferred this suit to the Court of the Joint Civil Judge (Senior Division) at Ahmedabad. The learned Civil Judge (Senior Division) accordingly sent the case to be tried by the learned Joint Civil Judge (Senior Division), Ahmedabad, and it is before this learned Judge that the suit is at present pending disposal. When the suit was set down for hearing before the learned Judge, the petitioner raised a preliminary objection of want of jurisdiction. His argument was that, when the case is transferred by the District Judge for trial or disposal to the Court of the Civil Judge (Senior Division), it is the principal Civil Judge (Senior Division) that must try it and that the Joint Civil Judge (Senior Division) had no jurisdiction to deal with it. On December 21, 1954 the learned Judge rejected this contention and held that he had jurisdiction to try the suit. Thereafter the petitioner applied for amendment of his written statement and on January 19, 1955 the application has been rejected by the learned Judge. It is against both these orders that the present revisional application has been preferred to this Court. It is clear that the order rejecting the application for amendment would not ordinarily be entertained by this court. But, in the present case, the validity of this order is also challenged on the ground that the trial Judge had no jurisdiction to try the suit and so even the application for amendment could not be tried by him. It is in this sense that the challenge to the validity of the order refusing leave to amend the written statement is also mixed up with the question of the Judge's jurisdiction to try this matter.

This revisional application was heard before Mr. Justice Bavdekar and his attention was invited to a decision of Mr. Justice Chainani and my learned brother in Civil Reference No. 22 of 1954. Mr. Justice Bavdekar thought that the question raised was of considerable importance and that the petitioner's

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contention should be considered by a Division Bench. That is why this matter has come before us for disposal.

It is well known that, when Act LVII of 1947 was enacted by the State Legislature, it was intended to entrust the administration of this Act to special Courts recognised under s. 28 of the Act. Unfortunately, the words used in s. 28 as it stood in the Act when it was originally passed had subsequently to be amended in view of the Full Bench decision of this Court in *Nilkanth Ramchandra v. Rasiklal*⁽²⁾ and ultimately, by ss. 10 and 11 of the amending Act III of 1949, s. 50 of the original Act was substantially modified and decrees or orders passed between February 13, 1948, and February 3, 1949, were virtually validated by the State Legislature. It is possible that, if the contention raised before us by the petitioner is accepted, it would become necessary for the State Legislature to intervene again in this matter and validate decrees and orders passed in several cases. It is this aspect of the matter which has, to some extent, weighed in our minds in referring the question of jurisdiction raised by this petition to a larger Bench.

Section 28 as it now stands in the Act is a result of several amendments made by the Legislature from time to time. It is unnecessary to trace the history of these amendments. Broadly stated, the position under s. 28 sub-s. (1) as it stands at present appears to be that civil actions falling within the purview of the Act should be tried in Greater Bombay by the Court of Small Causes at Bombay; in other places where Courts of Small Causes are established, by such Courts; and elsewhere, in the Courts of Civil Judges (Junior Division) having jurisdiction in the area in which the premises are situated. If a Court of Civil Judge (Junior Division) is not in existence in such places, it is the Court of Civil Judge (Senior Division) which has to try such suits. These are the Courts of special jurisdiction which are entrusted with the task of administering the provisions of this Act. Legislature appears to have thought that exigencies of the administration of justice may require the transfer of cases filed in the Courts of Small Causes, and so, by sub-s. (2) of s. 28, District Courts were authorised to transfer such cases to the Courts of Civil Judges (Senior Division) in their respective districts; and it is with a suit transferred by the District Court under s. 28 (2) (a) that we are concerned in the present revisional application. The question which calls for a decision under this sub-section lies within a very narrow compass. When a suit is transferred by the District Court from the Court of Small Causes to the Court of the Joint Civil Judge (Senior Division), is it necessary that the Civil Judge (Senior Division) presiding over the Court of the Civil Judge (Senior Division) should himself try the suit, or can the suit be left to be tried by Civil Judges, either of Senior Division or of Junior Division, who are appointed under s. 23 of the Bombay Civil

Courts Act (Act XIV of 1869) to assist the Civil Judge (Senior Division)? *Prima facie*, if under s. 28 sub-s. (1) (b) Courts of Civil Judges (Junior Division) are constituted into special Courts to try the suits under this Act, it does not seem reasonable to assume that the Legislature could have intended that suits which are transferred by the District Court to the Court of the Civil Judge (Senior Division) under s. 28 sub-s. (2) (a) have to be tried by the Civil Judge (Senior Division) alone and not by the other Civil Judges associated with his Court to help him under s. 23 of the Bombay Civil Courts Act. It is, however, clear that the question of jurisdiction must be decided, not on *prima facie* considerations flowing from the scheme of the Act as indicated in s. 28 sub-s. (1) or on grounds of reasonableness or convenience; the question of jurisdiction must be determined solely on the construction of s. 28 sub-s. (2) (a), and it is the construction of this sub-section which the Court will have to consider in the present revisional application.

Section 28, sub-s. (2) (a), provides that, notwithstanding anything contained in cl. (aa) of sub-s. (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area. Clause (b) of this sub-section authorises the transferee Court either to retry the suit transferred to it or to proceed from the stage at which it was withdrawn; and cl. (c) of this sub-section provides that the Court of the Civil Judge trying such a suit shall, for the purposes of such suit, be deemed to be the Court of Small Causes. It would be noticed that cl. (c) does not refer to the Court of the Civil Judge (Senior Division), but refers to the Court of a Civil Judge in general terms; and this may afford some assistance in construing cl. (a) of sub-s. (2). Two views are possible about the construction of cl. (a) of sub-s. (2) of s. 28. The transfer by the District Court to the Court of the Civil Judge (Senior Division) is for trial or disposal. It would be relevant to mention that in Part VI of the Bombay Civil Courts Act, which deals with Civil Judges, there is only one Court in the district place and that is the Court of the Civil Judge (Senior Division). With this Court are associated a Civil Judge or Civil Judges (Senior Division) as well as Civil Judges (Junior Division). If a Civil Judge (Senior Division) is appointed to assist the principal Civil Judge (Senior Division), s. 23 describes him as a Joint Civil Judge. It is not disputed that in a district place all Civil suits are filed in the Civil Courts presided over by the Civil Judge (Senior Division), and for trial and disposal they are administratively distributed by the principal Judge to the other Judges whether of Senior Division or of Junior Division, subject to their limit of pecuniary jurisdiction. If, after a suit is transferred by the District Court to the Court of

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the Civil Judge (Senior Division) under s. 28 sub-s. (2) (a), it is open to the Civil Judge (Senior Division) presiding over the Court to send such a suit for disposal to any of the Civil Judges appointed to assist him under s. 23 of the Bombay Civil Courts Act, then the question of jurisdiction raised by the petitioner would have to be answered against him. If, on the other hand, the effect of the transfer ordered by the District Court under s. 28 sub-s. (2) (a) is to require the Civil Judge (Senior Division) himself to try the suit, it would not be open to the said Judge to send such a case for trial or disposal to any other Judge associated with his Court. In effect, this latter instruction makes the Civil Judge (Senior Division) presiding over the transferee Court virtually a person named and it is he alone who must try such a suit. In the present case, the suit is being tried, not by a Civil Judge (Junior Division), but by a Civil Judge (Senior Division) who is appointed as a Joint Civil Judge with the principal Civil Judge (Senior Division) at Ahmedabad. Mr. Shah for the petitioner contends that even such a Civil Judge (Senior Division) cannot try the suit because the transferee Judge must be, in effect, the principal Civil Judge who presides over the Court of the Civil Judge (Senior Division) properly so-called. A Joint Civil Judge (Senior Division), says Mr. Shah, is as much disqualified from trying the present suit as a Civil Judge (Junior Division) would be. Mr. Shah concedes that, so far as this contention is concerned, it has been rejected by Mr. Justice Chainani and my learned brother in their decision in *Naranbhai Shankrabhai Patil v. Nandlal Balaram*.⁽³⁾ But he argues that the observations which seem to reject his contention are in the nature of *obiter dicta*. Besides, he suggests that these observations are inconsistent with the principal reason on which the decision substantially proceeds. It would, therefore, be necessary to refer very briefly to this decision and the reasons on which it proceeded.

In the reference which was considered by Mr. Justice Chainani and my learned brother, it appeared that in Ahmedabad three types of orders of transfer were made by the District Judge under s. 24 sub-s. (2) (a). In some cases, the suits were transferred to the Civil Judge (Senior Division); in some others, they were transferred to the Civil Judge (Senior Division) with a direction that he in his turn should transfer them to the Civil Judge (Junior Division); while in some others, the suits were transferred by the District Judge himself directly to the Civil Judge (Junior Division). It is these three classes of orders of transfer that were considered in this case. Mr. Justice Chainani and my learned brother took the view that

“the term ‘the Court of the Civil Judge (Senior Division)’ must necessarily mean the Court presided over by the Civil Judge (Senior

3. (1954) Civil Reference No. 22 of 1954, decided by Chainani and Gokhale JJ., on December 16, 1955 (unrep.).

Division); and that Court alone is competent to try the suit under clause (b) of sub-section (2) of section 28".

On this view, it was held that Civil Judges (Junior Division) had no jurisdiction to try these suits in any case and the orders transferring suits to their file were incompetent and invalid in law. As I have just indicated, in this case the question of jurisdiction which arises before us had not and could not be raised. Even so, since the matter appears to have been fully argued and has been elaborately considered in the judgment delivered by my learned brother, the position of the Civil Judge (Senior Division) associated with the Court of the Civil Judge (Senior Division) has also been considered. "In our opinion", observes my learned brother,

"after the withdrawal of the suit and its transfer under clause (a) of sub-s. (2), the only Court that can try the suit thereafter would be the Court presided over by a Civil Judge (Senior Division), though he may be the principal Civil Judge (Senior Division) or any other Civil Judge (Senior Division), who may be appointed or deputed to assist him."

If this be the true legal position, then the petitioner's contention would have to be rejected. But Mr. Shah argues that this observation, which is in the nature of *obiter*, is really inconsistent with the main basis of the decision, and that is the position which needs to be examined in the present case. The argument is that logically it is either the Civil Judge (Senior Division) presiding over the Court of the Civil Judge (Senior Division) who alone should be held competent to try suits transferred under s. 28 sub-s. (2) (a), or, if it is to the Court of the Civil Judge (Senior Division) that the suits are transferred and liberty is still left to the presiding Judge to assign some of these suits for disposal to the other Civil Judges associated with the Court to assist him under s. 23 of the Bombay Civil Courts Act, then jurisdiction should be available to all these Judges to try these suits, and, subject to the limitation of pecuniary jurisdiction, no distinction can and should be made between these joint Judges on the ground that some joint Judges are Civil Judges (Senior Division) while some others are Civil Judges (Junior Division). The learned Advocates appearing for both the parties urged before us that the point raised was of considerable importance. Indeed, if the view taken in *Naranbhai Shkrabhai Patel v. Nandlal Balaram* is finally accepted, and if it is further extended as contended by Mr. Shah before us, it would become necessary for the Legislature to intervene again and take appropriate legislative steps to validate a large number of decrees and orders which have been passed on the assumption that suits transferred under s. 28 sub-s. (2) (a) could, after such transfer, be tried by Civil Judges (Junior Division) associated with the Court of the Civil Judge (Senior Division) at district places. We understand that a very large number of decrees and orders would be rendered invalid because it appears to have been assumed that suits transferred to the Court of the

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Civil Judge (Senior Division) under s. 28 sub-s. (2) (a) could ultimately be tried by the Civil Judges (Junior Division) appointed to assist the said Court. In taluka places and in most of the district places such suits were and had to be tried by Civil Judges (Junior Division) and it was thought that Legislature had not intended to make any distinction or discrimination between suits filed and tried in taluka places and those filed and tried in the two district places—Ahmedabad and Poona—where Courts of Small Causes have been established. That is why, we think, it is desirable that the question of construction of s. 28 sub-s. (2) cl. (a) should be considered by a larger Bench.

Since the matter is of general importance and calls for an early decision to avoid unnecessary complications, we direct that the papers in this case should be placed before the learned Chief Justice to enable him to constitute a larger Bench at an early date to deal with this question. The question which we propose for the decision of the larger Bench is:—

“When a suit pending in a Court of Small Causes is withdrawn by the District Court and transferred for trial or disposal to the Court of the Civil Judge (Senior Division), can the Civil Judge (Senior Division) assign it to the file of (a) a Civil Judge (Senior Division) or (b) a Civil Judge (Junior Division), appointed to his Court to assist him under s. 23 of the Bombay Civil Courts Act, or is it necessary that the Civil Judge (Senior Division) himself should deal with it?”

The application in revision came up before the Full Bench composed of Chagla C. J. and Bavdekar and Dixit JJ. when a further question was framed viz.

“Whether the District Court has the power to transfer a suit pending in a Court of Small Causes to a Joint Senior Civil Judge or to a Civil Judge, Junior Division, under s. 24 of the Civil Procedure Code?”

The application was heard.

N. C. Shah, for the Applicant.

M. I. Patel, for *D. V. Patel*, for the Opponent.

Chagla C. J.—A question relating to jurisdiction arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, has been referred to this Full Bench. The scheme of that Act has often been considered by this Court and it is clear that under s. 28 special jurisdiction to try suits arising under the Act was conferred upon ordinary Courts of the land which have been set up under the Civil Courts Act. The Courts upon which special jurisdiction was conferred are enumerated in s. 28. Under s. 28 (1) (a) in Greater Bombay the Court is the Court of Small Causes and under cl. (aa) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court. Therefore, in the State of Bombay we have Courts of Small Causes in Poona and Ahmedabad and this provision would apply to those Courts. Then under s. 28 (1) (b) elsewhere, the Court of the Civil Judge, Junior Division, having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the

Court of the Civil Judge, Senior Division, having ordinary jurisdiction, shall have jurisdiction to try suits arising under the Act. In most Taluka towns we have Courts presided over by the Civil Judge, Junior Division. In those places those will be the Courts over which special jurisdiction has been conferred and where we have Courts which are not presided over by a Civil Judge, Junior Division, then the Court designated is the Court presided over by the Civil Judge, Senior Division, having ordinary jurisdiction. Then comes s. 28 (2) (a) which has caused some difficulty which has necessitated this Full Bench:

"Notwithstanding anything contained in clause (aa) of sub-s. (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Cause Courts Act, 1887, and transfer the same for trial or disposal to the Court of the Civil Judge, Senior Division, having ordinary jurisdiction in such area."

Then cl. (b) provides:

"Where any suit, proceeding or application has been withdrawn under clause (a), the court of the Civil Judge, Senior Division, which thereafter tries such suit, proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn."

And cl. (c) states:

"The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes."

Therefore, the scheme of s. 28 (2) (a) is very clear. Only in cases pending before the Court of Small Causes established under the Provincial Small Cause Courts Act, the District Court has been given the special power of withdrawing the suits pending in that Court and transferring them to another Court which is designated as a Court which would have the same special jurisdiction that the Small Causes Court has been given, and that Court is the Court of the Civil Judge, Senior Division. What has been sought to be argued is that when the District Judge exercises his power under s. 28 (2) (a) of withdrawing a suit and transferring the same for trial to the Court of the Civil Judge, Senior Division, he can only transfer it to the Civil Judge, Senior Division, and to no other Judge. In advancing this argument the provisions of the Bombay Civil Courts Act, 1869, are ignored. Before we look at that Act a certain well established principle may be enunciated.

When the Legislature confers special jurisdiction upon an ordinary Court of the land, that jurisdiction has to be exercised by the ordinary Court according to the procedure of that Court unless in the legislation conferring special jurisdiction there is some provision to the contrary. All the ordinary administrative and other powers of the Court are to be exercised as laid down in the law setting up that Court. All that the special legislation does is to confer special jurisdiction upon that Court. In other words, that Court, over and above the ordinary jurisdiction that it exercises, also exercises a certain special

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jurisdiction, but unless we find some indication in the law creating the special jurisdiction that that special jurisdiction has to be exercised in a special manner or that the Court has to function in a particular manner, the Court must function in the ordinary way and according to the ordinary law of the land. In s. 28 there is no indication whatever that the Court of the Civil Judge, Senior Division, to which suits have to be transferred under s. 28 (2) (a), has to function in any different manner than it would function as the ordinary Court, or that the procedure which has got to be followed has to be any different procedure. Therefore, we must now turn to the Civil Courts Act to find out what are the powers and the functions and the procedure of the Court of the Civil Judge, Senior Division.

The underlying scheme of the Bombay Civil Courts Act, 1869, is that it sets up District Courts and it also sets up in each district so many Civil Courts subordinate to the District Court as the State Government shall from time to time direct. Therefore ordinarily in each place, whether it is a taluka place or a district town, there is one Court other than the District Court and to that Court one or more Judges may be appointed. Section 23, para. 5, provides:

"For the purpose of assisting the Judge of any subordinate Court in the disposal of the civil business on his file, the High Court may appoint to such Court from the members of the Subordinate Civil Judicial Service of the Province one or more Joint Civil Judges, or the District Judge may, with the previous sanction of the High Court, depute to such Court the Judge of another Subordinate Court within the District. A Civil Judge thus appointed or deputed to assist in the Court of another Civil Judge shall dispose of such civil business within the limits of his pecuniary jurisdiction as may, subject to the control of the District Judge, be referred to him by the Judge of such Court."

Therefore, the Principal Judge, if one might so designate the Judge of the Court, in each place may have other Judges appointed to assist him in disposing of the work and it is left to the Principal Judge to refer cases for disposal to one or more of his colleagues. But the Court is one and the Court may consist, as we have already pointed out, of one Principal Judge or one Principal Judge and one or more Judges to assist him. Then s. 24 deals with the classes of Judges and they are Civil Judge, Senior Division, and Civil Judge, Junior Division, and it lays down what the jurisdiction of these Judges is; and s. 25 deals with the special jurisdiction of the Civil Judge, Senior Division. It is in the light of these provisions that we must now again turn to s. 28 (2) (a) of the Rent Act.

It will be immediately noticed that the Legislature did not intend that when a suit was transferred from the Small Causes Court to the Court of the Civil Judge, Senior Division, it should be tried by any particular Judge of that Court. No Judge is designated as the Judge who alone should try a suit transferred under the circumstances mentioned in s. 28 (2) (a). All that the Legislature was concerned with was that instead

of the ordinary Court, viz. the Small Causes Court, having special jurisdiction in certain circumstances, another ordinary Court of the land, viz. the Court of the Civil Judge, Senior Division, should have jurisdiction. Therefore, it is entirely fallacious to suggest that the transfer under s. 28 (2) (a) is to the Civil Judge, Senior Division. The transfer is not to the Civil Judge, Senior Division, but the transfer is to the Court of the Civil Judge, Senior Division. This is not a matter of interpretation; it is the very language used by the statute. Therefore, if the transfer is to the Court of the Civil Judge Senior Division, the provisions to which reference has just been made in s. 23, para. 5, must apply. Once the Court is seized of the matter transferred to it by the District Court under s. 28 (2) (a), the Principal Judge of that Court is vested with the power conferred upon him under s. 23, para. 5. Therefore, in our opinion, on the transfer of a rent suit from the Small Causes Court by the District Court under s. 28 (2) (a) to the Court of the Civil Judge, Senior Division, the Principal Judge of that Court has the power to refer that case to any one of his colleagues who has been appointed to assist him in the disposal of the cases on his file. That colleague may be a Joint Civil Judge, Senior Division, or he may be a Civil Judge, Junior Division, because not only the Joint Civil Judge, Senior Division, but also the Civil Judges, Junior Division, are Judges of one and the same Court, the Court presided over by the Civil Judge, Senior Division.

Any other construction would lead to this rather curious result that whereas the Legislature trusted Courts of Civil Judges, Junior Division in taluka places to try rent suits, they insisted on only the seniormost Civil Judge trying similar suits in district places like Ahmedabad and Poona. No logical reason has been suggested by Mr. Shah why the Legislature should have intended to make this distinction. All that he could contend was that it may be a lacuna in the legislation; and that we must give effect to legislation as we find it. Before we can come to the conclusion that there is a lacuna in any law passed by the Legislature, our attempt must be to give such a construction to a law passed by the Legislature as would avoid any such lacuna and avoid any such anomalies, and in our opinion the clear language of s. 28 (2) (a) leaves no doubt that that is the only construction possible.

A contrary view has been taken by a Division Bench of this Court in *Naranbhai Shakrabhai Patel v. Nandlal Balaram*⁽⁴⁾. With great respect to the learned Judges, they have attached more importance to s. 24 of the Bombay Civil Courts Act which merely deals with the pecuniary jurisdiction of the Senior and Junior Civil Judges than to the fact that the Court set up under that Act is one Court consisting of one or more Judges. The learned Judges have also emphasised the fact that under

4. 1955 Civil Reference No. 21 of 1954 decided by Chainani & Gokhale JJ. on December 16, 1955 (Unrep.).

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s. 28 (2) (a) the transfer of the suit is for trial and disposal and that the suit having been transferred it must be tried and disposed of only by the Senior Civil Judge and could not be referred to any other Judge for trial or disposal. Again, with respect, this would be the correct view if a particular Judge was designated by the Legislature as the Judge who should try or dispose of the suit. But if it is not a Judge or a Court which is designated, then it is the Court which is trying or disposing of the suit, whether it is tried and disposed of by one Judge or another Judge of the same Court.

There is one other question which also arises on this reference and that is whether apart from the power of the Principal Judge of the Civil Court to refer cases to his colleagues under s. 23, para. 5, the District Judge himself could transfer a suit from the Small Causes Court and direct a Joint Senior Civil Judge or a Junior Civil Judge to try that suit, and the determination of that question depends upon whether s. 28 of the Rent Act has in any way abrogated the provisions of s. 24 of the Civil Procedure Code. In our opinion, s. 28 of the Rent Act does not affect the right of the District Judge under s. 24 of the Civil Procedure Code in the slightest degree. If a rent suit is pending in the Small Causes Court, then under s. 24 of the Civil Procedure Code the District Court has the power to transfer it to a Court subordinate to the District Court provided that Court is competent to try the suit. Therefore, the District Judge could only exercise his power under s. 24 of the Civil Procedure Code of transferring rent suits provided he transfers those suits to those ordinary Courts upon which special jurisdiction has been conferred by s. 28 of the Rent Act, and therefore if the District Judge withdraws the suit from the Small Causes Court and transfers it to a Joint Senior Civil Judge or to a Junior Civil Judge, he is validly and properly exercising his power under s. 24 of the Civil Procedure Code because both the Joint Senior Civil Judge and the Junior Judge have jurisdiction to try the rent suit under s. 28.

In this particular case which has been referred to us by the Division Bench consisting of Mr. Justice Gajendragadkar and Mr. Justice Gokhale, as a matter of fact the learned District Judge transferred the suit to the Joint Senior Civil Judge, Ahmedabad. In our opinion, he exercised his power under s. 24 of the Civil Procedure Code, read with s. 28 (2) (a) of the Rent Act.

Therefore, the answer to the first part of the question submitted to us will be in the affirmative and to the second part in the negative. We will frame a further question, viz.

“Whether the District Court has the power to transfer a suit pending in a Court of Small Causes to a Joint Senior Civil Judge or to a Civil Judge, Junior Division, under s. 24 of the Civil Procedure Code?”
and answer that question in the affirmative.

Answer accordingly.

K. B. S.